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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/444,083

Applicant(s)

FLETCHER ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5,8 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,8 and 14-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13,16.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 5, 8, and 14-29 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 5, 8, 14-19, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama et al. (USPN 5846262) in view of Ames et al. (H1674).

Regarding claims 5, 14, and 25, Sayama discloses the present invention substantially as claimed. However, Sayama is silent on whether or not the attachment

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panels comprise elastomeric materials. Ames discloses an absorbent article comprising elastomeric attachment panels (Figure 1, elements 62/64 and 38; col. 14, line 51 through col. 15, line 12; and col. 17, line 15 through col. 18, line 21). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the attachment panels of Sayama to incorporate elastomeric materials as taught by Ames. Doing so would provide attachment panels that give the absorbent article an improved fit and reduces the possibility of sagging or gapping.

Sayama/Ames discloses an absorbent article 1 (Figure 1) comprising an absorbent chassis defining a longitudinal axis, a transverse axis, front and back waist edges parallel to the transverse axis, opposite side edges extending between the front and back waist edges, a front (first) waist region contiguous with the front waist edge, a back (second) waist region contiguous with the back waist edge, and a crotch region 8, which extends between and interconnects the first and second waist regions. The absorbent article of Sayama/Ames further comprises elastomeric side panels 11 and 12. The side panels 12 are bonded to the absorbent chassis in the first (rear) waist region (Figure 1) and extend transversely outward from the absorbent chassis in the first waist region (Figure 1). Each attachment panel comprises a nonwoven substrate ('262 col. 3, lines 11-13) extending from the waist opening to the leg opening area.

The absorbent article of Sayama comprises a rectangular composite structure having opposite linear side edges parallel to the longitudinal axis and opposite linear end edges parallel to the transverse axis, the composite structure comprising a liquid permeable bodyside liner 2, a liquid impermeable outer cover 3 bonded to the bodyside

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liner (col.2 lines 7-10), and an absorbent assembly **4** disposed between the bodyside liner and outer cover.

Sayama is silent on the composition of the absorbent core. However, Ames discloses an absorbent core comprising hydrophilic fibers ('674 col. 5, lines 56-67). It would have been obvious to one having ordinary skill in the art to incorporate hydrophilic fibers in the absorbent core of Sayama as taught in Ames. Doing so would provide an absorbent core that is soft and compressible and capable of absorbing and retaining urine and other body exudates.

The absorbent article further comprises a fastening system comprising first and second fastening components **15** disposed on the back side panels and attached to the distal edges of the side panel and first and second mating components **16** disposed on the front side panels, and attached to the distal edges of the side panel. The absorbent article is capable of providing a pant configuration having a waist opening and a pair of leg openings when the front and waist regions are attached. The absorbent article of Sayama/Ames further comprises elastomeric components disposed between the fastening components and the absorbent assembly. A transverse distance between the first and second fastening components is substantially equal to a transverse distance between the first and second mating components (Figure 1).

The absorbent article further comprises leg elastic members **13** longitudinally aligned along each side edge in the crotch region. The leg elastic members have front terminal points located adjacent longitudinally innermost parts of the front side panels

and back terminal points located adjacent longitudinally innermost parts of the back side panels (Figure 1).

Regarding claim 15, Sayama discloses the present invention except for the fastening components in back and front waist regions abutting the respective waist edges. Ames discloses fastening components and mating fastening components that abut their respective waist edges. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fasteners of Sayama to abut the waist region as taught by Ames. Doing so would provide improved fit at the waist of a wearer.

In reference to claim 16, the side panels of Sayama/Ames form part of the waist end edges parallel to the transverse axis (Figure 1) and opposite leg end edges. The panels are elastically extensible throughout ('674 col. 17, lines 15-32), which comprises the area from the waist end edge to the leg end edge.

In reference to claim 17, the front side panels of diaper are longitudinally spaced from the backside panels (Figure 1).

In reference to claims 18 and 28, the attachment panels have a length dimension that is about 20%-25% or greater than the overall length (Figure 1).

In reference to claim 26, Sayama discloses the present invention except for the elastomeric front waistband disposed in the front waist region and positioned between the pair of elastomeric front side panels. Ames discloses an elastic waist feature 34 disposed in the front and rear waist regions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the waist regions of

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Sayama with an elastic waist feature as taught by Ames. Doing so would provide an elastic waist that provides improved fit and containment.

In reference to claim 27, Sayama/Ames discloses elastomeric leg members extending from adjacent an elastomeric front side panel in the front waist region to adjacent an elastomeric side panel in the back waist region ('262 Figure 1).

5. Claims 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama/Ames. Sayama/Ames discloses the present invention substantially as claimed. However, Sayama/Ames does not disclose the loop-type fasteners are disposed on the inner surface and the mating hook fasteners are disposed on the outer surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose the loop-type fasteners on the inner surface and the mating hook fasteners on the outer surface, since a mere reversal of the essential working parts involves only routine skill in the art, and since Sayama discloses either component can be covered with the inventive protective sheet (col. 3, lines 20-25). Sayama/Ames discloses the loop-type fasteners are sized larger than the mating hook-type fasteners ('262 Figure 1).

6. Claims 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama in view of Ames as applied to claims 5 and 14 above and further in view of Cooper (USPN 5087253).

Regarding claims 20 and 29, Sayama/Ames discloses all that is claimed in the present invention except Sayama/Ames does not provide refastenable seams covering

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about 90-98% of a distance between the waist and leg openings. Cooper teaches a combination diaper/training pant with hook and loop fasteners disposed on the longitudinal sides of the diaper to hold the diaper tightly in place (col. 6, line 62). The fasteners of Cooper are positioned as shown in Figure 4 of '253 and have a length-to-width ratio of about 7.5, which includes the range of about 5 or greater. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the diaper of Sayama/Ames with fasteners such as disclosed by Cooper in order to sufficiently hold the diaper on the user. A fastener with this length to width ratio as shown in Cooper covers about 90-98% of the distance between the waist and leg openings (Cooper, Figure 1).

Regarding claim 29, refer to the 103 rejection of claims 5 and 14 where the limitations of the axis, waist and side edges, composite structure, and leg elastic members are found. Sayama/Ames discloses the present invention substantially as claimed. However, Sayama/Ames fails to disclose an outer cover graphic is disposed on the article. Cooper discloses a training pant with an outer cover graphic. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Kling to incorporate an outer cover graphic. Doing so would provide a means for personalizing or decorating the training pant for aesthetic purposes.

The attachment panels have a length dimension that is about 20%-25% or greater than the overall length (Figure 1).

Sayama/Ames incorporates by reference the panels may comprise inner and outer facing layers and a plurality of elastomeric segments between the inner and outer



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facing layers. Ames col. 18, lines 16-21 refers to zero strain laminates as taught by Buell et al. (USPN 5151092), which incorporate a plurality of elastomeric segments between inner and outer facing layers ('092 col. 18, lines 49-61).

7. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama/Ames in view of Tanzer et al. (USPN 5782819).

In reference to claim 21, Sayama/Ames discloses the present invention substantially as claimed as stated in the rejection of claims 5 and 14 above. However, Sayama/Ames fails to disclose the article further comprises support members extending from the side panels. Tanzer discloses an absorbent article comprising support members extending from the side panels of the article (Figure 5, elements 36c and 36d/44/46/54/63). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the side panels of Sayama/Ames with support members to enable the article to conform to the wearer.

The invention of Sayama/Ames/Tanzer discloses support members bonded to and extending transversely outward from the first and second elastomeric side panels in the second waist region ('819 Figure 5).

Regarding claims 22-24, Sayama/Ames/Tanzer discloses the support members are bonded and extend transversely outward from the side panels, and mating fasteners are disposed on the support members ('819 Figure 1). The first and second fastening components or the mating fastening components may alternately be attached to tab fastener 44 edge ('819 col. 12:10-14) in the first waist region. The fastening components

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comprise integral portions of the support members in that the fastening components are formed as a unit with the support member (col. 12, lines 3-20 and col. 14, line 6 through col. 16, line 7). The support members of Sayama/Ames/Tanzer comprise a loop material ('819, element 80).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703)308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens  
Examiner  
Art Unit 3761

  
GLENN K. DAWSON  
PRIMARY EXAMINER

July 30, 2002